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ONE INTERNATIONAL PLACE, 20th FL				
ATTN: PATENT ADMINISTRATOR			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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GREENBERG TRAURIG, LLP
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BOSTON MA 02110

In re Application of :
Wood et al. :
Serial No.: 10/068,299 : Decision on Petition
Filed: February 6, 2002 :
Attorney Docket No.: 127630-010100/US :
:

This letter is in response to the petition filed under 37 C.F.R. § 1.181 filed on October 8, 2010 to reverse the examiner's refusal to enter the after final amendment mailed September 8, 2010 and to withdraw the finality of September 9, 2010.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

The examiner mailed to applicants a non-final Office action on December 30, 2009. Claims 29, 34-63, 65, 67-79 were pending and claims 29, 61, 63, 65 and 75-79 were rejected. Claims 34-60, 62 and 67- 74 were withdrawn from consideration. Claims 29, 61, 63, 65, and 75-79 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 29, 61, 63, 65, and 75-79 were rejected under 35 U.S.C. 102(b) as being anticipated by Noel-Hudson et al taken in light of Van Bossuyt. Claims 29, 61, 63, and 75-79 were also rejected under 35 U.S.C. 102(b) as being anticipated by Hirobe.

In response thereto, applicants submitted amendments and remarks on April 29, 2010 addressing the rejections set forth in the Office action of December 30, 2009.

The examiner mailed to applicants a final Office action on July 9, 2010. Claims 29, 34-63, 65, 67-79 were pending and claims 29, 61, 63, 65 and 75-79 were again rejected. Claims 34-60, 62 and 67- 74 were withdrawn from consideration. Claims 29, 61, 63, and 75-79 are rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al. Claim 65 is rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al. taken in light of Hart. Claims 29, 61, 63, 65, and 75-79 are

rejected under 35 U.S.C. 103(a) as being unpatentable over Baur et al. taken in view of Lucas et al. and Hart.

On September 9, 2010, applicants submitted an after final amendment including claim amendments and remarks.

On September 22, 2010, the examiner mailed to applicants an advisory action indicating that the after final amendment would not be entered because new issues requiring new search and consideration would be raised, issues of new matter would be raised and the amendment did not simplify the issues for appeal.

On October 8, 2010, applicants submitted the petition currently under review.

DISCUSSION

The petition and file history have been carefully considered.

Applicants argue that "the Examiner cited a new piece of art to reject a previously presented claim element." More specifically, applicants argue "In the Final Office Action dated July 9, 2010, the Examiner stated that "[t]he claim amendments require for the first time that the composition contain a population comprising keratinocyte basal cells, melanocytes, and fibroblasts; previously, all that was required was that the cells be viable. The new rejections were necessitated by the amendments to the independent claims." Final Office Action dated July 9, 2010 at page 6, emphasis added (see Exhibit D). Applicants respectfully disagree. The recitation of keratinocyte basal cells, melanocytes, and fibroblasts was not presented for the first time in the Amendment and Response filed April 29, 2010 (see Exhibit C). Rather, the recitation was presented in the preceding Amendment and Response filed October 19, 2009 (see Exhibit A) and considered by the Examiner as a claim limitation in the Non-Final Office Action dated December 30, 2009 (see Exhibit B)." Finally, applicants reiterate "From the above prosecution history, it is clear that the recitation of keratinocyte basal cells, melanocytes, and fibroblasts was previously presented for examination (i.e., in the Amendment and Response filed October 19, 2009) and previously considered by the Examiner as a claim limitation (i.e., in the Non-Final Office Action dated December 30, 2009). Specifically, one of ordinary skill in the art would understand that in the claims dated October 19, 2009, "a ratio of keratinocyte basal cells, fibroblasts and melanocytes present in said tissue sample" necessarily requires the presence of all three cell types, because keratinocyte basal cells, fibroblasts and melanocytes are necessarily present in a dermal-epithelial (i.e., skin) tissue sample. This position is in agreement with the Examiner's finding that skin contains keratinocytes, melanocytes, and fibroblasts. See Non-Final Office Action dated December 30, 2009 at page 6. Thus, the recitation of keratinocyte basal cells, melanocytes, and fibroblasts was previously presented in the Amendment and Response filed October 19, 2009, and cannot be reasonably said to be presented for the first time in the Amendment and Response filed April 29, 2010."

Applicants' arguments have been accorded careful consideration but they are not persuasive that the examiner erred in making the Office action of July 9, 2010 final or by not entering the amendment after final of September 9, 2010. Specifically, the finality of the Office action of July 9, 2010 was proper because although the words "keratinocyte basal cells, melanocytes, and fibroblasts" appeared in the claims of October 19, 2009, those claims did not actually require the sample to contain all three types of cells. The October 19, 2009 claims required that the composition comprise a ratio of these cells "comparable" to the ratio found in a skin sample, but the claims set forth no basis for comparison and did not actually require that the skin sample be one that contained all three. The claim amendments of April 29, 2010 now clearly and specifically require the composition to comprise all three cell types, not just to have "a ratio" of the cell types that is somehow "comparable" to the "ratio" in another sample. Accordingly, the finality of the Office action of July 9, 2010 is deemed proper and the examiner's refusal to enter the amendment of September 9, 2010 is also deemed proper.

DECISION

The petition is **DENIED**.

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

Should there be any questions about this decision, please contact Special Program Examiner Marianne Seidel, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.



Jackie Stone
Technology Center 1600